

## **REMARKS**

The last Office Action of January 24, 2007 has been carefully considered. Reconsideration of the instant application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 13-29 are pending in the application. Claims 13, 15, 16, 21, 23, 25-28 have been amended. No claim has been canceled. Claim 30 has been added. Amendments to the specification have been made. No claim surcharge is due.

It is noted that claims 21, 25, 26 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 13-19, 24-26, 28, 29 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Pat. No.5,640,730 to Godette.

It is noted with appreciation that claims 20, 22, 23, 27 are indicated allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Claim 21 has also been indicated allowable if rewritten in independent form to overcome the rejection under 35 U.S.C. §112 and to include all of the limitations of the base claim and any intervening claims.

### **REJECTION UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

Applicant has amended claims 21, 25, 26 to address the §112 rejection. These changes are self-explanatory and cosmetic in nature and should not be considered as a narrowing amendment to trigger prosecution history estoppel. With respect to the amendment of claim 21, applicant notes that claim 21 now sets forth the spaced-apart relationship between the guide pin and the joint, as clearly shown in Figs. 1-4.

Withdrawal of the rejection of the claims 21, 25, 26 under 35 U.S.C. §112,

second paragraph is thus respectfully requested.

### **REJECTION UNDER 35 U.S.C. §102(b)**

In order to clearly distinguish the present invention from Godette, applicant has amended claim 13 by incorporating subject matter of original claim 27. Claims 16, 23, 27 have been amended to make them consistent with the changes to claim 13. Claim 30 has been added to set forth the single-arm configuration of the levers. Support therefore can be found on page 6, lines 2, 3 of the instant specification.

More specifically, claim 13, as now on file, sets forth the particular configuration of the articulated lever, and the movement relationship between headrest and backrest as well as articulated lever. Claim 13 expressly recites the leading movement by the headrest which is followed by an initial lifting of the backrest, whereby a further lifting of the backrest causes ultimately a blockage by the articulated lever so as to act as rigid lever. As the Examiner acknowledged, the blockage (or stop) by the articulated lever is neither taught or suggested by the prior art, taken alone or in any combination.

In addition, Godette discloses an adjustment mechanism by which the headrest is tilted in the absence of any lifting action of the backrest. In fact, a lifting of the backrest after the headrest has been moved to a certain extent is undesirable. Reference is made in particular to col. 5, lines 23 to 28, where it is stated:

*As the head rest section 50 is tilted from a horizontal to its angled position the foundation 54 affixed thereto is similarly lifted. The foundation 54 is also affixed to the back support section 48 and thus due to the resistance provided by the thick mat the back support section would tend to also be pivoted up with the head rest section 50. This is undesirable.*

For the reasons set forth above, it is applicant's contention that Godette neither teaches nor suggests the features of the present invention, as recited in claim 13.

Claims 14-29 which depend from claim 13 and therefore contain all the limitations thereof, patentably distinguish over the applied prior art in the same manner as claim 13.

It is also noted that claims 13, 15, 28 have been amended to refer to --profiled element-- instead of "spindle". Support can be found in original claim 1, which refers to --profiled element--, although original claim 1 contained a mistranslation. The correct translation of claim 1 of the original PCT/EP2003/007470, of which the instant application is the 371 National Stage application, is as follows:

1. Reclining element (10) having a swingable backrest (11), a headrest (12), which is hingedly coupled thereto, and an optional footrest (15), with these swingable components (11, 12, 15) being movable by an electromotive adjustment device including at least a one drive motor and profiled elements, preferably, threaded spindles (16, 17) , which are ~~operates~~ operated by ~~[[a]] the drive motor and thus a profiled element~~, and at least one adjusting element (18, 19) placed upon the threaded spindle (16, 17) and moveable in longitudinal direction of the threaded spindle, characterized in that the backrest (11) is raised by an articulated lever, which acts like a toggle lever and is linked to the adjusting element (18).

Withdrawal of the rejection under 35 U.S.C. §102(b) and allowance of claims 13-30 are thus respectfully requested.

#### **CLARIFICATION AMENDMENT**

Paragraphs [0015] and [0016] of the instant specification have been amended to address the informalities raised by the Examiner with respect to the disclosure.

Paragraph [0001] of the instant specification has been amended to correct the mistranslation, as referred to at the end of the previous heading with respect to original claim 1.

## CITED REFERENCES

Applicant has also carefully scrutinized the further cited prior art and finds it without any relevance to the claims on file. It is thus felt that no specific discussion thereof is necessary.

## INFORMATION DISCLOSURE STATEMENT

It is noted that the Examiner has not considered the references as submitted with the Information Disclosure Statement, as filed on March 3, 2005, because no concise explanation had been given. However, as stated in the M.P.E.P., section 609, "[W]here the information listed is not in the English language, but was cited in a search report or other action by a foreign patent office in a counterpart foreign application, the requirement for a concise explanation of relevance can be satisfied by submitting an English-language version of the search report or action which indicates the degree of relevance found by the foreign office. This may be an explanation of which portion of the reference is particularly relevant, to which claims it applies, or merely an "X", "Y", or "A" indication on a search report.". Applicant has submitted a copy of the International and German Search Reports, together with an English-language translation, which indicate the relevancy of the cited prior art with respective categorization. Therefore, it is applicant's contention that the Information Disclosure Statement , as filed on March 3, 2005 is proper, and the Examiner should have considered the cited prior art.

Submitted herewith is a new PTO-Form 1449 which lists the information previously crossed out by the Examiner. The Examiner is requested to initial the

attached form PTO-1449 and to return a copy of the initialed document to the undersigned as an indication that the attached references have now been considered and made of record.

### CONCLUSION

In view of the above presented remarks and amendments, it is respectfully submitted that all claims on file should be considered patentably differentiated over the art and should be allowed.

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

By: 

Henry M. Feiereisen  
Agent For Applicant  
Reg. No: 31,084

Date: May 18, 2007  
350 Fifth Avenue  
Suite 4714  
New York, N.Y. 10118  
(212)244-5500  
HMF:af